The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte YOSHIHIKO HIROTA, KATSUHISA TOYAMA, SHOJI IMAIZUMI, HIDEYUKI HASHIMOTO, and KAZUHIRO ISHIGURO

Appeal No. 2005-0272
Application No. 09/263,805

ON BRIEF

MAILED
JUN 15 2005
U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Before RUGGIERO, BLANKENSHIP, and SAADAT, Administrative Patent Judges.

RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal from the Examiner's rejection of claims 1, 2, 15, 22, 23, 29, 30, 52, 53, and 56.

The disclosed invention relates to an image processing method and apparatus in which an image to be processed is divided into blocks, and a determination is made as to whether a block is a color block or not. A further determination is made as to

whether the image to be processed is a color image or not based on the ratio of color blocks to the total number of blocks.

Representative claim 1 is reproduced as follows:

1. An image processing apparatus including:

a brightness data extracting section for extracting brightness data from image information of each pixel;

means for determining a reference value based on extracted brightness data;

a first determination means for determining whether or not a pixel included in an image is a color pixel by using the reference value;

means for dividing the image into a predetermined number of a plurality of blocks;

counting means for counting the number of color pixels for each block; and

second determination means for determining whether or not the image is a color image based on the counting result by the counting means.

The Examiner relies on the following prior art:

Koizumi et al. (Koizumi)	5,287,204	Feb. 15, 1994
Goto	5,748,801	May 05, 1998 (filed Dec. 16, 1996)

Claims 1, 2, 15, 22, 23, 29, 30, 52, 53, and 56 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Koizumi in view of Goto.

Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Brief (Substitute, filed

February 25, 2004, Paper No. 22) and Answer (mailed May 17, 2004, Paper No. 23) for the respective details.

OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the Examiner, the arguments in support of the rejection, and the evidence of obviousness relied upon by the Examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, Appellants' arguments set forth in the Brief along with the Examiner's rationale in support of the rejection and arguments in rebuttal set forth in the Examiner's Answer.

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in appealed claims 1, 2, 15, 22, 23, 29, 30, 52, 53, and 56. Accordingly, we affirm.

At the outset, we note that Appellants' arguments in the Brief are directed solely to features which are set forth in independent claim 1. Accordingly, we will select independent claim 1 as the representative claim for all the claims on appeal, and claims 2, 15, 22, 23, 29, 30, 52, 53, and 56 will stand or

fall with claim 1. Note In re King, 801 F.2d 1324, 1325, 231 USPQ 136, 137 (Fed. Cir. 1986); In re Sernaker, 702 F.2d 989, 991, 217 USPQ 1, 3 (Fed. Cir. 1983). Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Brief have not been considered and are deemed waived (see 37 CFR § 41.37(c)(1)(vii)).

As a general proposition in an appeal involving a rejection under 35 U.S.C. § 103, an Examiner is under a burden to make out a prima facie case of obviousness. If that burden is met, the burden of going forward then shifts to Appellants to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Hedges, 783 F.2d 1038, 1039-40, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976).

With respect to representative independent claim 1, Appellants' arguments in response to the Examiner's 35 U.S.C. § 103(a) rejection assert a failure to establish a prima facie

case of obviousness since all of the claimed limitations are not taught or suggested by the applied prior art references. In particular, Appellants contend (Brief, page 7) that, contrary to the Examiner's position, the Goto reference does not provide a teaching of determining a threshold value based on extracted brightness data.

After reviewing the Goto reference in light of the arguments of record, however, we are in general agreement with the Examiner's position as stated in the Answer. As pointed out by the Examiner (Answer, page 6), representative claim 1 broadly sets forth, without more, the determination of a reference, i.e., a threshold, value based on extracted brightness data, a feature which we agree with the Examiner is clearly disclosed by Goto (Figures 2-4, column 4, lines 15-43). Further, we find to be unpersuasive Appellants attempt (Brief, page 7) to draw a distinction between the claimed reference value determination feature and that disclosed by Goto by asserting that, in Goto, an operator uses a mouse to set appropriate threshold values while observing changes in an image on a display. It is our view that, while Appellants are correct in their characterization of the disclosure of the reference value setting feature, we fail to see why an operator's use of a mouse to set a reference value based

on extracted brightness data would not be considered a determination of a reference value as claimed. As pointed out by the Examiner (Answer, page 6), the operator reference value setting feature of Goto is similar to that disclosed by Appellants.

We further find to be without merit Appellants' contention (Brief, pages 7 and 8) that the addition of Goto to Koizumi would alter the operation of Koizumi. We agree with the Examiner (Answer, page 7) that Koizumi discloses the identical image block dividing feature as claimed by Appellants, with the only exception being that Koizumi is silent as to how the stored reference or threshold values are determined. Appellants' arguments to the contrary notwithstanding, it is our view that the particular manner in which a threshold value is determined would not alter the operation of the color determination system of Koizumi which, like Appellants, is based on the counting of color determined blocks in a processed image which has been divided into blocks.

Lastly, we find no error in the Examiner's line of reasoning (Answer, pages 4 and 9) which concluded that the skilled artisan, seeking ways to determine the stored threshold values in Koizumi, would be led to the brightness data extraction teachings of Goto for all of the reasons articulated by the Examiner.

For the above reasons, since it is our opinion that the Examiner's prima facie case of obviousness has not been overcome by any convincing arguments from Appellants, the Examiner's 35 U.S.C. § 103(a) rejection of representative independent claim 1, as well as claims 2, 15, 22, 23, 29, 30, 52, 53, and 56 which fall with claim 1, is sustained.

In summary, we have sustained the Examiner's 35 U.S.C. § 103(a) rejection of all of the claims on appeal. Therefore, the decision of the Examiner rejecting claims 1, 2, 15, 22, 23, 29, 30, 52, 53, and 56 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv)(effective September 13, 2004; 69 Fed. Reg. 49960 (August 12, 2004); 1286 Off. Gaz. Pat. and TM Office 21 (September 7, 2004)).

AFFIRMED

JOSEPH F. RUGGIERO)
Administrative Patent Judge)
)
)
HOWARD B. BLANKENSHIP) BOARD OF PATENT
Administrative Patent Judge) APPEALS AND
) INTERFERENCES
)
)
MAHSHID D. SAADAT)
Administrative Patent Judge)

JFR:hh

Appeal No. 2005-0272
Application No. 09/263,805

MCDERMOTT, WILL & EMERY, LLP
600 13TH ST., N.W.
WASHINGTON, D.C. 20005-3096